

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-152196-11
Date:
February 23, 2012

Re:

Legend

Wife
Husband
Date 1
Trust

W
Accountant

Dear _____ :

This letter responds to a letter dated December 15, 2011, and prior correspondence, from your authorized representative, requesting extensions of time under § 2642(g)(1) of the Internal Revenue Code (Code) and § ' 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate your generation-skipping transfer (GST) exemption to a trust.

Facts

Taxpayers are Husband and Wife. On Date 1, a date prior to December 31, 2000, Wife created an irrevocable trust, Trust, for the benefit of Taxpayers' children and grandchildren. Wife transferred property valued at \$w to Trust on Date 1.

Husband and Wife each filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Returns for Year, and elected under § 2513 to treat the gifts as made one-half by each spouse. However, Taxpayers' accountant, Accountant, who prepared the Forms 709 failed to allocate Wife's and Husband's GST exemption to the transfers attributable to each spouse.

Taxpayers request extensions of time to make allocations of her GST exemption and his GST exemption to the transfers to Trust. You represent that \$w exceeds the total available GST exemption of Wife and Husband on Date 1. If a favorable ruling is granted, Wife intends to make a late allocation of her available GST exemption and Husband intends to make a late allocation of his available GST exemption sufficient to cause Trust to have an inclusion ratio of zero. It is represented that, to date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would give rise to a GST tax liability.

Law and Analysis

Section 2513(a) provides generally that, for gift tax purposes, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of subchapter B) made by a "transferor" to a skip person. In general, under § 2652(a)(1) and § 26.2652-1(a)(1) of the Generation-Skipping Transfer Tax Regulations, the individual with respect to whom the property was last subject to federal estate or gift tax is the transferor of the property for GST tax purposes. Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 2631(a), as in effect for decedents dying and generation-skipping transfers before January 1, 2004, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(4)(i) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709.

Section 2642(b)(1)(A) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to

the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Wife is granted an extension of time of 120 days from the date of this letter to allocate \$1,000,000 of her available GST exemption to the Date 1 transfer to Trust. In addition, Husband is granted an extension of time of 120 days from the date of this letter to allocate \$1,000,000 of his available GST exemption to the Date 1 transfer to Trust. The allocations will be effective as of the date of the transfer and will be based on the value of the contributions on the date of the transfer. Any additional late allocations of GST exemption made by Wife and Husband are effective on the date Forms 709 making the late allocations are filed by Wife and Husband.

The allocations of Taxpayers' GST exemption should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, along with the Forms 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
James F. Hogan
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for § 6110 purposes

cc: